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Attorney for Defendant
FERNANDO GUTIERREZ

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FERNANDO GUTIERREZ,

Defendant.

NO. CR-03-0201-WFN

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS MULTIPLICITOUS
INDICTMENT AND/OR REQUIRE
ELECTION BY THE GOVERNMENT

FACTS

The defendant, at the time of filing this brief, is awaiting arraignment on the Third Superseding Indictment on June 8, 2005. Trial is scheduled for June 13, 2005. Counts 1 and 2 deal with Conspiracy to Import and the Importation of Pseudoephedrine in violation of 21 U.S.C. §§ 960(d)(3) and 960 and 18 U.S.C. § 2. The acts are alleged to have occurred between August 30, 2002 to February 17, 2003. Counts 3 and 4 deal with the same co-defendants, time period and underlying facts, but are charged under 18 U.S.C. §§ 371, 545 and 18 U.S.C. § 2.

LEGAL ARGUMENT

Multiplicity in an Indictment divides an act into several criminal charges for what is, in essence, only a single illegal act. U.S. v. Jewell, 827 F.2d 586, 588 (9th Cir.

1 1987). The psychological effect on the jury at trial is that the alleged criminal activity is
2 of greater scope and gravity than it actually is. U.S. v. Chacko, 169 F.3d 140, 145 (2d
3 Cir. 1999) (citing U.S. v. Dixon, 509 U.S. 688, 696 (1993)). An Indictment is
4 multiplicitous if the same offense and the same underlying fact form the basis to
5 support more than one charge.

6 The offense and underlying facts which support the importation counts and the
7 smuggling counts are the same. The co-defendant are the same. There is nothing to
8 distinguish the smuggling and importation counts.

9 **CONCLUSION**

10 Based upon the argument set forth above, the defendant, Fernando Gutierrez,
11 respectfully requests that the Indictment be dismissed or the government be require to
12 elect between the importation, counts 1-2, or the smuggling, counts 3-4.
13

14 DATED this 6th day of June, 2005.

15
16 s/ Ken Therrien
17 KEN THERRIEN, WSBA #20291
18 Attorney for Fernando Gutierrez
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5 I hereby certify under penalty of perjury of the laws of the State of Washington that on June 6,
6 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System
7 which will send notification of such filing to the following: TOM HOPKINS, Assistant United States
8 Attorney.

9
10 s/ Ken Therrien
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